SPEECH BY THE LORD PRESIDENT

Friday 8 January 2016

A few words. First, to say that our thoughts are with our absent, but esteemed, Principal Clerk, Graeme Marwick, as he recovers from elective surgery. I am sure that we all wish him well. Secondly, I wish to thank my own colleagues and all the staff for their support over the last 7 months or so whilst the appointment process was taking place. This was an invaluable resource during a period of some uncertainty. Thirdly, I wish to thank all who have taken the time to write to me with words of encouragement and wisdom. I will reply to all of them over time. Fourthly, I wish to thank everyone here for taking the time to attend this ceremony.

This is not the time or place for prolonged analysis of the challenges which the courts face as we commence another New Year. It is after all a business day and some of what I am going to say has been said before. I should, however, say something about what is being addressed and with what priority. I am not today going to cover the integration of the reserved tribunals into the Scottish Courts and Tribunal Service, but that does not mean that it is not regarded as of particular importance.

On the civil side, we will shortly have the Sheriff Appeal Court hearing the merits of appeals; removing a portion (perhaps one fifth) of the appellate

business from this court's Inner House. The All Scotland Sheriff Personal Injuries Court has recently been launched and is expected, along with other sheriff courts operating in the post new privative jurisdiction limit, to absorb the bulk of the PI work traditionally channelled through this court's Outer House. We await statistical information on the practical effect of these major pillars of Lord Gill's reforms. It will undoubtedly produce a rebalancing of civil work which ought to see the Court of Session engaged primarily in cases appropriate to the supreme courts in Scotland.

In due course, consideration may require to be given to the size of the Divisions and the work of the appellate judges according to the change in business volumes. We await too the impact of the new provisions: for leave to proceed with judicial review petitions, to appeal generally to the Inner House; and to proceed to the United Kingdom Supreme Court. The UK Supreme Court provisions should ensure that only significant matters of law, rather than fact, and then only ones of general public importance, will be considered by that court. That will be something into which that court will have a decisive input. Again, however, a rebalancing will undoubtedly occur, which will hopefully ensure that each case will ultimately be considered at, but only at, the appropriate judicial level.

There will be continued work to increase accessibility to the courts, including the Court of Session. This will involve a determined drive towards

more sustainable procedures with the introduction in the near future of what will in effect be the electronic process. There will be efforts focused on the time taken not for a case to be heard in court, but for a decision to be issued. The problem area here is primarily the Outer House, but in that context it applies across the board in ordinary, commercial and family actions. The solution requires careful consideration of the allocation of judicial reading, hearing and writing time; a fine balance which, after many years of experimentation, we have not yet succeeded in securing.

Accessibility at sheriff court level is also a priority. The untiring Rules Rewrite team, to which we continue to owe a deep gratitude, have been producing a vast series of new rules in a variety of different fields. The effectiveness of the new Simple Procedure Rules will be the touchstone of our success in this difficult area, which affects so many in terms of relatively low value, often consumer related, claims by private individuals.

On the criminal side, there are, as Donald Rumsfeld said, known unknowns. What we do know is that over the last 4 years or so there has been a 60% increase in the number of High Court trials. Numerically this means that, within broadly the same budget, we are dealing annually with 160 more trials, each of which takes an average of 6 to 7 days, than we were processing in 2010. This is a significant challenge. The known unknown is that, other than anecdotal reasoning concerning the subject-matter of the modern High

Court prosecution, the underlying cause of this – and it exists at sheriff solemn level too – is uncertain.

We await the coming of the new Criminal Justice Act with the Bowen Reforms on sheriff and jury trials. This will bring sheriff and jury practice into line with the High Court.

There has been concern expressed about the extension of time limits, not for the Crown bringing cases into court at a first diet or preliminary hearing, but thereafter for the court to allocate the case for trial within the current programming constraints. The issue for the future will be whether, in the era of statutory disclosure, scientific analysis of DNA findings and the recovery and detailed scrutiny of text and email messaging, the narrow window allowed by statute for the commencement of a trial is sustainable or in accord with modern principles of fairness or justice.

The recent Audit Scotland report on summary prosecutions threw up some interesting statistics including levels of churn and the substantial costs of the late resolution of cases. These will all be addressed.

The Scottish Courts and Tribunal Service will shortly be in a position to complete its review on evidence and procedure with a view to asking the Government to consider reforms, some of a radical nature, to the way in which we conduct trials and, in particular, the requirement for all witnesses to

attend court and testify on oath, even if their evidence is either not controversial or not to be challenged. The continued efficacy of the now almost eviscerated prohibition of hearsay will require re-examination in light of modern technological advances.

We can only have a successful Scottish Legal System if we all participate in its constant re-evaluation. This does not mean that we all require to agree on the best way forward. We will never achieve that level of perfect harmony in Parliament House. If we can all, however, engage in discussing where the problems lie and attempt to devise practical solutions for them, the system will begin to match public expectations in the 21st Century. I look forward to working with everyone willing to do so in achieving that end.

Thank you once again for coming this morning.

The court will now adjourn.

LORD PRESIDENT

8 January 2016